IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 79 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH K BHAGWATI

Versus

STATE OF GUJARAT

Appearance:

NANAVATI ASSOCIATES for Petitioners

MR ST MEHTA APP for Respondent No. 1

MR MB GANDHI for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/2000

ORAL JUDGEMENT

This revision application under Section 397 CrPC has been preferred by the accused, five in all, in Criminal Case No. 1688 of 1994 against the order dated

5th February, 1996 made by the learned Metropolitan Magistrate, Court No. 19, Ahmedabad below Application Exh. 4.

It appears that the complainant Shankerbhai Patel was serving as a Maintenance Engineer in Stovec Industries Limited of which the accused nos. 1 & 2 are the Managing Director and the Chairman respectively. The accused no. 3 is the Corporate Manager at Ahmedabad and the accused nos. 4 & 5 are the Works Manager and the Deputy Manager, Nasik Division. The complainant had some difference of opinion with the Company on account of his transfer from Ahmedabad to Nasik for which he raised an industrial dispute. Since the complainant did not obey the order of transfer, by order dated 10th February, 1994, he was dismissed from service which gave rise to another dispute. Ultimately, the dispute between the complainant and the company was settled and the settlement was arrived at under Section 2 (p) of the Industrial Disputes Act, 1947. Pursuant to the said settlement, the complainant had agreed to tender voluntary resignation and the company had agreed to pay a sum of Rs. 1,57,997=47p. in full and final settlement of the disputes. Of the said amount, a sum of Rs. 1,00,000/= was paid to the complainant on 17th June, 1994 by a Demand Draft, while the remaining amount of Rs. 57,997=47p. was remitted by a cheque drawn on the same date. In compliance of the terms of the settlement, the complainant on 13th June, 1994 withdrew the complaints pending before the Conciliation Officer under the Industrial Disputes Act, 1947. Thereafter, company gave an advice to the Bank to stop payment of the aforesaid sum of Rs. 57,997=47 p. paid by the cheque. The cheque was accordingly dishonoured. Therefore, the complaint.

It was the claim of the complainant that the accused had deceived the complainant by paying the aforesaid sum of Rs. 57,997=47p. by cheque and had deceived him by stopping the payment thereof and had induced the complainant to enter into the aforesaid settlement by deception. The accused had thus committed offence punishable under Section 406 and 420 IPC. It is the case of the accused that under the settlement, the complainant had agreed to withdraw all the cases lodged by him against the company. In compliance thereof he did withdraw the complaints pending before the Conciliation Officer. However, on the next day ie., on 1st July, 1994 he approached the Conciliation Officer and withdrew the earlier withdrawal of cases. Thus, the complainant had acted in contravention of the terms of agreement and the accused had, therefore, no other alternative but to

ensure stop payment of cheque given to the complainant.

Pursuant to the complaint lodged before the learned Metropolitan Magistrate, Ahmedabad and the summons issued thereon, the accused preferred Misc. Criminal Application no. 5262 of 1994 under Section 482 CrPC before this Court and prayed for quashing the process issued against them. The said application was dismissed by this Court [Coram : Mr. Justice K.R Vyas] on 30th December, 1994. Pending the said application, the accused were ordered to deposit a sum of Rs. 57,997=47 p. with this Court which amount, according to the accused, has been deposited. I am informed by the registry that pursuant to the order dated 30th December, 1994, the said amount has been remitted to the complainant Shankarbhai Patel on 5th July, 1995. The accused thereafter made an application for permanent exemption from personal appearance, before the learned Metropolitan Magistrate. The accused also preferred application Exh. 4 for discharge under Section 245 CrPC. The learned Magistrate, by his order dated 5th February, 1996 rejected the said application Exh. 4. Feeling aggrieved, the accused have preferred the present Application.

The learned Judge has observed that the complaint prima facie discloses the commission of offence by the accused and the question of discharge can be considered only after taking evidence of the complainant side in accordance with Section 244 CrPC.

It is contended that the complaint prima facie does not disclose commission of offence punishable either under Section 406 nor under section 420 IPC against the accused. No criminal offence takes place on account of breach of agreement.

I see no substance in the contentions raised before me. The learned Magistrate is right in holding that the question of discharge can be considered after recording evidence in accordance with Section 244 CrPC. Besides, even this Court has dismissed Misc. Criminal Application No. 5262 of 1994 seeking quashing of the process. I see no justification in ordering discharge of the accused at this stage.

In view of the above discussion, the Revision Application fails. Rule is discharged. Interim relief is vacated.

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Prakash*